

UNITED STATES DISTRICT COURT
DISTRICT OF PUERTO RICO1 IN THE MATTER OF:
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6 NELSON ROCHE-SANTORO
7
8Misc. No. 03-016 (JAF)
Civil No. 96-2443 (JAF)

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S.D. DISTRICT COURT
SAN JUAN, P.R.

OPINION AND ORDER

On November 1, 2005, we issued an endorsed order adopting the September 26, 2005, sealed Report and Recommendation ("R&R") issued by Magistrate Judge Delgado-Colón, which recommended the commencement of disciplinary proceedings leading to the disbarment of attorney Nelson Rochet-Santoro ("Rochet" or "Petitioner"), due to violations of the American Bar Association's Model Rules of Professional Conduct ("Model Rules"). Docket Document No. 63. The Magistrate Judge's report concluded that Rochet's conduct as counsel in Civil Case Number 96-2443 violated Model Rules 1.1, 1.3, 1.4, 1.5, 1.6, 1.8(f); 3.2; 5.4(a), (b), (c), and (d)(1); 8.2(a) and 8.4(a), (c), and (d). The Magistrate, therefore, recommended that Rochet be certified to show cause in writing as to why disciplinary proceedings leading to his disbarment should not be administered. Id.

On October 7, 2005, Rochet filed an objection to the R&R, issuing a blanket denial of all of the factual findings, and arguing that he had been deprived of his procedural due process rights. Docket Document No. 67. On January 19, 2006, we ordered a

Misc. No. 03-016 & Civ. No. 96-2443 (JAF)

-2-

1 disciplinary hearing for February 15, 2006, where Rochet was to be
2 heard as to why he should not be disbarred for the misconduct found
3 by the Magistrate Judge. Docket Document No. 76. On February 13,
4 2006, Rochet filed motions alleging deprivation of his procedural due
5 process rights and requesting the resignation of Magistrate Judge
6 Delgado-Colón. Docket Document Nos. 78, 79. Rochet failed to appear
7 at the disciplinary hearing on February 15, 2006, and has not
8 provided this court with any explanation for his absence. Docket
9 Document No. 80.

10 On March 1, 2006, the active judges of this District discussed
11 this matter. After careful review of the record, the Magistrate
12 Judge's findings, and Rochet's objections, it was concluded that
13 Rochet's procedural due process rights have been respected. Due to
14 the serious and egregious nature of the misconduct involved, we
15 agreed to order that Rochet be disbarred from practice in the United
16 States District Court for the District of Puerto Rico.

17 I.

18 Factual and Procedural Synopsis

19 To review the origins of this matter, we briefly summarize the
20 factual and procedural history as delineated in the R&R, expounding
21 where necessary. Docket Document No. 63.

Misc. No. 03-016 & Civ. No. 96-2443 (JAF)

-3-

1 On November 21, 1996, in the area of Río Piedras, Puerto Rico,
2 a gas explosion caused extensive damage to several commercial
3 establishments, fruit vendors, and individuals. As a result of the
4 incident, over one-hundred law suits were brought before this court
5 against the Enron Corporation, San Juan Gas, and various other
6 defendants. All civil cases were consolidated under Civil Case
7 No. 96-2443, commonly referred to as the "Río Piedras Explosion
8 Litigation," and were subjected to a global settlement with payments
9 being issued to plaintiffs under the supervision of the presiding
10 judicial officer, District Judge Robert J. Ward, now deceased.
11 Rochet, an attorney admitted to practice before this court,
12 represented multiple plaintiffs involved in the litigation.

13 On February 6, 2003, Judge Ward, concerned about the propriety
14 of deductions made by Rochet from the settlement amounts awarded to
15 some of his clients, opened the matter for investigation as a
16 separate case, assigned Misc. Case No. 03-16, and referred the matter
17 to Magistrate Judge Delgado-Colón. Docket Document No. 1.
18 Subsequent to the court order initiating the investigation, numerous
19 plaintiffs previously represented by Rochet filed letters or motions
20 complaining of Rochet's professional conduct and the quality of legal
21 services he rendered. See Docket Document Nos. 3, 4, 5, 6, 11, 24,
22 27. In their filings, Rochet's former clients expressed a multitude

Misc. No. 03-016 & Civ. No. 96-2443 (JAF)

-4-

1 of concerns, expanding into allegations of misconduct well beyond the
2 deductions that initially spawned the investigation, including
3 dissatisfaction with the manner in which Rochet: (a) presented cases
4 to clients; (b) communicated with clients; (c) threatened clients to
5 sign attorney's fee contracts; and (d) disbursed settlement awards
6 among successful litigants. Additionally, through the course of the
7 investigation, it was discovered that Rochet had entered into a
8 contract with a non-attorney, Certified Public Accountant Enrique
9 Cardona, to share the attorney's fees from the Río Piedras Explosion
10 Litigation.

11 Evidentiary hearings relating to the disputed settlement
12 deductions were initially held on June 23, 24, 25, and July 15, 2003.
13 Docket Document No. 36. On July 21, 2003, the court granted Rochet
14 ten days to file an informative motion regarding any desired
15 clarifications to the testimony submitted at the evidentiary
16 hearings. Docket Document No. 21. On August 13, 2003, Rochet filed
17 an objection to the testimony given by his former secretary, Nora
18 Reyes, at the July 15, 2003, evidentiary hearing. Docket Document
19 Nos. 21, 23. Subsequently, Magistrate Judge Delgado-Colón considered
20 documentary evidence and held several in-chambers conferences
21 regarding the final disbursement of settlement amounts. Additional

Misc. No. 03-016 & Civ. No. 96-2443 (JAF)

-5-

1 evidentiary hearings were held on June 29 and 30, and July 27, 2005.
2 Docket Document Nos. 54, 55, 59.

3 On September 26, 2005, Magistrate Judge Delgado-Colón issued the
4 R&R regarding the disbursement of funds to Rochet's clients involved
5 in the Río Piedras Explosion Litigation, Docket Document No. 64, and
6 a report recommending the commencement of disciplinary proceedings
7 against Rochet. Docket Document No. 63.

8 On October 7, 2005, Rochet filed an objection to the Magistrate
9 Judge's report, and filed a motion requesting additional time to
10 supplement his objection. Docket Document Nos. 66, 67. Rochet's
11 motion for an extension of time was granted, and he was given until
12 October 17, 2005, to supplement his objection. Docket Document
13 No. 68. Rochet did not file any additional information in support of
14 his objection.

15 On January 19, 2006, this court ordered a hearing to be held on
16 February 15, 2006, where Rochet was given the opportunity to show
17 cause as to why he should not be disbarred for the misconduct found
18 in the Magistrate's report. Docket Document No. 76. On February 13,
19 2006, Rochet filed motions alleging deprivation of his procedural due
20 process rights, and requesting the resignation of Magistrate Judge
21 Delgado-Colón. Docket Document Nos. 78, 79. Rochet failed to appear
22 at the disciplinary hearing on February 15, 2006, and has since

Misc. No. 03-016 & Civ. No. 96-2443 (JAF)

-6-

1 failed to provide this court with any explanation for his absence.

2 Docket Document No. 80.

3 **II.**

4 **Legal Standards**

5 **A. Disciplinary Proceedings**

6 "Any court which has the power to admit attorneys to practice
7 may also sanction them for unprofessional conduct." Standing Comm. on
8 Discipline v. Ross, 735 F.2d 1168, 1170 (9th Cir. 1984). "In the
9 federal system there is no uniform procedure for disciplinary
10 proceedings." Id. The individual judicial districts are free to
11 define the rules to be followed and the grounds for punishment. See
12 28 U.S.C. § 1654. Federal district courts are bound by the
13 disciplinary rules they implement when proceeding against attorneys
14 for violation of ethical standards. Dailey v. Vought Aircraft Co.,
15 141 F.3d 224, 230 (5th Cir. 1998); Matter of Thalheim, 853 F.2d 383,
16 386, 388 (5th Cir. 1988); United States v. Stoneberger, 805 F.2d
17 1391, 1393 (9th Cir. 1986); Matter of Abrams, 521 F.2d 1094, 1104-05
18 (3d Cir. 1975).

19 Rule 83.5 of the Local Rules of the United States District Court
20 for the District of Puerto Rico provides the procedure that must be
21 followed when misconduct or allegations of misconduct by an attorney
22 admitted to practice in this jurisdiction come before this court.

Misc. No. 03-016 & Civ. No. 96-2443 (JAF)

-7-

1 Local Rule 83.5 states that "[a]ny attorney admitted to practice
2 before this Court may be disbarred, suspended from practice,
3 reprimanded, or subjected to such other disciplinary action as the
4 circumstances may warrant for misconduct defined in these Rules, and
5 for good cause shown, and after notice and opportunity to be heard."

6 D.P.R. LOCAL R. 83.5(a). The rules specify that any

7 [a]cts or omissions by an attorney admitted to
8 practice before this Court, individually or in
9 concert with any other person or persons, which
10 violate the Model Rules of Professional Conduct,
11 as amended, shall constitute misconduct and
12 shall be grounds for discipline, whether or not
13 the act or omission occurred in the course of an
14 attorney-client relationship or in the course of
15 judicial proceedings.

16 Id.

17 Rule 83.5(b) further states that when "misconduct or allegations
18 of misconduct" are brought to the attention of the court, "the Judge
19 shall refer the matter before a Magistrate Judge or Disciplinary
20 Committee for investigation and a report and recommendation." D.P.R.
21
22 LOCAL R. 83.5(b).

23 Upon notice of the report and recommendation, the attorney is
24 given fifteen days to file objections with the court. Id.
25 Thereafter, the matter is submitted to the court for final
26 determination. Id.

27 B. Clear-and-Convincing-Evidence Standard

Misc. No. 03-016 & Civ. No. 96-2443 (JAF)

-8-

1 The clear-and-convincing-evidence standard has been recognized
2 as the applicable standard in attorney discipline proceedings. See
3 Sealed Appellant 1 v. Sealed Appellee 1, 211 F.3d 252, 256 (5th Cir.
4 2000); In re Medrano, 956 F.2d 101, 102 (5th Cir. 1992) (a court may
5 discipline an attorney only upon the presentation of clear and
6 convincing evidence); Rosenthal v. Justices of the S. Ct. of Cal.,
7 910 F.2d 561, 564 (9th Cir. 1990) ("[t]he burden is on the state to
8 establish culpability by convincing proof and to a reasonable
9 certainty"); In re Levine, 675 F. Supp. 1312, 1318 (M.D. Fla. 1986);
10 cf. In re Córdova-González, 996 F.2d 1334, 1336 (1st Cir. 1993)
11 (citing Rosenthal for the procedural due process rights of a charged
12 attorney in a disciplinary proceeding); New England Ins. Co. v.
13 Sylvia, 783 F. Supp. 6, 10 (D.N.H. 1991); but see In re Palmisano, 70
14 F.3d 483, 486 (7th Cir. 1995) (adopting preponderance of the evidence
15 standard). An attorney disciplinary proceeding does not require that
16 civil or criminal liability be established. In the Matter of Darrel
17 E. Johnson, 729 P.2d 1175, 1180-81 (Kan. 1986).

18 The Supreme Court has defined the clear and convincing standard
19 "as that weight of proof which 'produces in the mind of the trier of
20 fact a firm belief or conviction as to the truth of the allegations
21 sought to be established, evidence so clear, direct and weighty and
22 convincing as to enable the fact finder to come to a clear

Misc. No. 03-016 & Civ. No. 96-2443 (JAF)

- 9 -

conviction, without hesitancy, of the truth of the precise facts'" of the case. Medrano, 956 F.2d at 102 (quoting Cruzan by Cruzan v. Dir., Mo. Dep't. of Health, 497 U.S. 261, 285 n.11 (1990) (internal punctuation and citations omitted)).

III.

Analysis

Rochet's objection to the Magistrate's report appears to focus on the claim that he was deprived of his procedural due process rights as: (1) he was not placed on notice of the disciplinary proceedings against him; (2) he was not given the opportunity to cross-examine or confront witnesses testifying about his alleged misconduct; and (3) Magistrate Judge Delgado-Colón did not perform her judicial duties in an impartial, neutral manner. Docket Document No. 67. We examine each of Rochet's claims in turn and, for the reasons stated below, find them unconvincing.

A. Procedural Due Process

Due process is a flexible concept. A determination of the particular process due depends on the nature of the proceedings and the interests at stake. Goldberg v. Kelly, 397 U.S. 254, 268-69 (1970).

Although disciplinary proceedings are characterized as quasi-criminal, "the imposition of disciplinary sanctions itself implicates

Misc. No. 03-016 & Civ. No. 96-2443 (JAF)

-10-

1 an independent and fundamental duty of the district court - the
2 supervision of the attorneys who practice as members of its bar - in
3 ways that other sanctions simply cannot." Crowe v. Smith, 151 F.3d
4 217, 230 (5th Cir. 1998). Disbarment proceedings, rather than

5 [a] resolution regarding the alleged criminality
6 of a person's acts, [are] a determination of the
7 moral fitness of an attorney to continue in the
8 practice of law. Although conduct which could
9 form the basis for a criminal prosecution might
10 also underlie the institution of disciplinary
11 proceedings, the focus is upon gauging an
12 individual's character and fitness, and not upon
13 adjudging the criminality of his prior acts or
14 inflicting punishment for them.

15
16 In re Daley, 549 F.2d 469, 474 (7th Cir. 1977). Thus:

17
18 [a] clear distinction exists between proceedings
19 whose essence is penal, intended to redress
20 criminal wrongs by imposing sentences of
21 imprisonment, other types of detention or
22 commitment, or fines, and proceedings whose
23 purpose is remedial, intended to protect the
24 integrity of the courts and to safeguard the
25 interests of the public by assuring the
26 continued fitness of attorneys licensed by the
27 jurisdiction to practice law. The former type
28 of proceeding is, in actuality, 'criminal' in
29 nature and therefore within the ambit of the
30 Fifth Amendment safeguards against self-
31 incrimination; the latter is not.

32
33 Id. at 475; see also Johnson, 921 F.2d at 586 (disbarment
34 proceedings "seek to determine the fitness of an official of the
35 court to continue in that capacity and to protect the courts and the
36 public from the official ministration of persons unfit to practice").

Misc. No. 03-016 & Civ. No. 96-2443 (JAF)

-11-

1 Therefore, "[a]lthough attorney discipline proceedings have been
2 called 'quasi-criminal,' the due process rights of an attorney in a
3 disciplinary proceeding 'do not extend so far as to guarantee the
4 full panoply of rights afforded to an accused in a criminal case.'"

5 In re Córdova-González, 996 F.2d 1334, 1336 (1st Cir. 1993) (quoting
6 Razatos v. Colo. Supreme Court, 746 F.2d 1429, 1435 (10th Cir.
7 1984)) (citations omitted); see also Sealed Appellant, 211 F.3d at
8 254-55 (quoting Razatos); Palmisano, 70 F.3d at 486 (where state
9 court had disbarred attorney using clear and convincing burden of
10 proof, federal court declined to find that quasi-criminal nature of
11 the proceedings required the federal court to make an independent
12 finding of an ethical violation using a reasonable doubt burden of
13 proof); Rosenthal, 910 F.2d at 564 (finding that a lawyer's
14 disciplinary proceeding is not a criminal proceeding and, as a
15 result, protections normally afforded to a criminal defendant do not
16 apply); Matter of Disciplinary Proceedings of Phelps, 637 F.2d 171,
17 176 (10th Cir. 1981) (finding that, although the proceedings were
18 quasi-criminal, the due process right to closing arguments extends
19 only to criminal cases); Daley, 549 F.2d at 476 n.6 (compiling
20 cases).

21 Rather, "an attorney facing discipline 'is entitled to
22 procedural due process, including notice and an opportunity to be

Misc. No. 03-016 & Civ. No. 96-2443 (JAF)

-12-

1 heard.'" Id. (quoting Rosenthal, 910 F.2d at 564); cf. Dailey, 141
2 F.3d at 229 (finding that the quasi-criminal nature of disciplinary
3 proceedings demanded notice and opportunity to be heard); Phelps, 637
4 F.2d at 176 (holding that "the standard in [attorney disciplinary
5 proceedings] is one of permitting the attorney a fair opportunity to
6 present his case"); Lowe v. Scott, 959 F.2d 323, 335 (1st Cir. 1992)
7 (due process in proceeding to revoke physician's license requires
8 notice of the charges and an opportunity to be heard). In fact,
9 "that attorney discipline proceedings require proof only by clear and
10 convincing evidence, as opposed to 'beyond a reasonable doubt,' is
11 indicative of the mere quasi-criminal nature of such proceedings,
12 whose nature would not implicate all of the due process requirements
13 attendant purely criminal proceedings." Sealed Appellant, 211 F.3d at
14 254-55.¹

15 Therefore, inasmuch as Rochet suggests the procedures here are
16 insufficient because they do not grant him traditional measures of
17 criminal due process, these arguments fail. Romero-Barceló v.
18 Acevedo-Vilá, 275 F. Supp. 2d 177, 196 (D.P.R. 2003).

19 1. Lack of Notice

20 Rochet claims that he was not placed on notice of the nature of
21 the disciplinary proceedings against him, and has not had access to

¹We note that in at least one circuit, evidentiary hearings are not absolutely required. In re Evans, 834 F.2d 90, 91 (4th Cir. 1987).

Misc. No. 03-016 & Civ. No. 96-2443 (JAF)

-13-

1 the evidence against him. Docket Document Nos. 67, 78, 79. When an
2 attorney faces disciplinary proceedings, he "must receive prior
3 notice as to the 'reach of the proceedings and the precise nature of
4 the charges leveled' against him." Romero-Barceló, 275 F. Supp. 2d
5 at 191 (quoting In re Ruffalo, 390 U.S. 544, 552 (1968)). A court
6 apprised of an attorney's misconduct need not limit itself to the
7 charges or characterization of misconduct that initially led to the
8 disciplinary proceedings. Id. at 197. It may "modify the nature of
9 the disciplinary proceedings, as long as it provides the respondent
10 with notice of the alleged misconduct and an opportunity to respond."

11 Id.

12 The current investigation was initiated due to questions
13 regarding the propriety of Rochet's deductions to settlement amounts
14 owed to his clients, but expanded in scope after numerous complaints
15 of professional misconduct were filed by concerned individuals. See
16 Docket Document Nos. 3, 4, 5, 6, 11, 24, 27. However, Rochet has
17 been given more than adequate notice of the investigation's expanded
18 scope. The Magistrate Judge's report and recommendation has
19 exhaustively detailed the numerous violations of the Model Rules for
20 which Rochet now faces disbarment. Docket Document No. 63.
21 Additionally, this court, in scheduling the formal disbarment hearing
22 which Rochet failed to attend, again reiterated to Mr. Rochet that he

Misc. No. 03-016 & Civ. No. 96-2443 (JAF)

-14-

faced disbarment for the conduct outlined in the Magistrate's report. Docket Document No. 76 (Rochet "is again placed on notice of what should, by now, be obvious: The court requires Mr. Rochet to show cause as to why disciplinary action, including disbarment, should not be ordered in light of the serious and egregious nature of his professional misconduct as found by the Magistrate Judge's investigation.").

Rochet alleges that he is unaware of the nature of the charges against him, as he has not had access to transcripts of certain evidentiary hearings nor alleged "secret" motions filed by his former clients. Docket Document Nos. 78, 79. On December 23, 2004, Rochet filed a motion requesting an order to receive transcripts of hearings which took place during June 23, 24, 25, 2003, and July 15, 2003. Docket Document No. 30. On January 18, 2005, Magistrate Judge Delgado-Colón entered an order granting the motion. In turn, the undersigned instructed the Court's Operations Manager to supply any copies requested by Rochet. Docket Document No. 31. We cannot discern what has prevented Rochet from taking advantage of this order, beyond wild accusations that the Magistrate Judge, despite her written order to the contrary, has undertaken "secretive behavior" to block Rochet's access to the hearing transcripts. Docket Document No. 79. Had Rochet bothered to attend his own disbarment hearing, he

Misc. No. 03-016 & Civ. No. 96-2443 (JAF)

-15-

1 may have been able to clarify what has prevented him from accessing
2 the evidentiary hearing transcripts. As it stands, we find Rochet's
3 allegations of access denial wholly without merit.

4 We are similarly puzzled as to the "secret" motions Rochet
5 refers to in his motion, as he has continuously had access to the
6 entire sealed record at the courthouse, and has taken advantage of
7 this access in the past. See, e.g., Docket Document No. 76 ("In
8 respect to Rochet's request for copies of the complaints [filed
9 against him] by his former clients, we remind Mr. Rochet that he
10 continues to have the opportunity to view the entire sealed record,
11 including the referenced complaints, of Misc. Case No. 03-016, at the
12 courthouse.").

13 We conclude that Rochet has been on notice of the specific
14 misconduct for which he now faces sanctions, as the Magistrate
15 Judge's report makes abundantly clear what specific actions
16 constitute violation of the Model Rules, and clearly notes that he
17 faces disbarment for his misconduct. Docket Document Nos. 66, 76.

18 **2. Evidentiary Hearings**

19 Rochet contends that the proceedings before Magistrate Judge
20 Delgado-Colón were conducted without the guarantee of due process as
21 he was not given the opportunity to cross-examine or confront

Misc. No. 03-016 & Civ. No. 96-2443 (JAF)

-16-

1 witnesses testifying, resulting in the admission of false evidence
2 into the record. Docket Document No. 67.

3 It is well settled that full due process rights do not attach
4 at investigatory stages that do not directly affect or adjudicate
5 rights of an individual. S.E.C. v. Jerry T. O'Brien, Inc., 467 U.S.
6 735, 742 (1984). As the Supreme Court clarified in Hannah v. Larche,

7 [w]hen governmental agencies adjudicate or make
8 binding determinations which directly affect the
9 legal rights of individuals, it is imperative
10 that those agencies use the procedures which
11 have traditionally been associated with the
12 judicial process. On the other hand, when
13 governmental action does not partake of an
14 adjudication, as for example, when a general
15 fact-finding investigation is being conducted,
16 it is not necessary that the full panoply of
17 judicial procedures be used.

19 363 U.S. 420, 442 (1960) (holding that the Commission of Civil Rights
20 did not have to inform the targets of its investigation of the
21 specific charges, the identities of the complainants, or allow the
22 targets to cross-examine witnesses).

23 When a preliminary determination is without legal effect in and
24 of itself, due process will be satisfied if there is an opportunity
25 to be heard before any final order of the agency becomes effective.

26 Ewing v. Mytinger & Casselberry, 399 U.S. 594, 598 (1950) (stating
27 that the court has "repeatedly held that no hearing at the
28 preliminary stage is required by due process as long as the requisite

Misc. No. 03-016 & Civ. No. 96-2443 (JAF)

-17-

1 hearing is held before the final order becomes effective"); Matter of
2 Ellis, 504 N.W.2d 559, 562-63 (N.D. 1993) (fact that attorney was not
3 given notice and did not appear at preliminary investigatory hearing
4 was not a violation of due process when the initial proceeding was
5 followed by more formal disciplinary proceedings); Terrell v. Miss.
6 Bar, 635 So.2d 1377, 1383-84 (Miss. 1994) (finding that the fact the
7 record contained no evidence of service of process and attorney was
8 not given opportunity to cross examine witnesses during precomplaint
9 investigative proceedings did not result in due process violation).

10 The reasoning behind these cases is clear. A respondent will
11 be able to receive his constitutionally-guaranteed due process if and
12 when the initial investigation leads to formal proceedings. The
13 investigatory process:

14 [c]ould be completely disrupted if investigative
15 hearings were transformed into trial-like
16 proceedings . . . Fact-finding agencies without
17 any power to adjudicate would be diverted from
18 their legitimate duties and would be plagued by
19 the injection of collateral issues that would
20 make the investigation interminable. Even a
21 person not called as a witness could demand the
22 right to appear at the hearing, cross-examine
23 any witness whose testimony or sworn affidavit
24 allegedly defamed or incriminated him, and call
25 an unlimited number of witnesses of his own
26 selection. This type of proceeding would make a
27 shambles of the investigation and stifle the
28 agency in its gathering of facts.
29

30 Hannah, 363 U.S. at 443-44.
31

Misc. No. 03-016 & Civ. No. 96-2443 (JAF)

-18-

1 The evidentiary hearings held by the Magistrate Judge did not
2 have legal effect, in and of themselves, but were used to compile
3 evidence forming the basis of the Magistrate's report and
4 recommendation. The final disciplinary hearing, scheduled on
5 February 15, 2006, was the venue where Rochet would have been able to
6 put forth his case and confront the evidence against him, had he
7 chosen to attend. Docket Document Nos. 80, 81.

8 In regards to Rochet's assertion that he was not able to
9 directly confront or cross-examine the witnesses that had testified
10 to his misconduct, we note that "[t]he confrontation clause is a
11 criminal law protection," Rosenthal, 910 F.2d at 565, and as such,
12 does not apply to an attorney disciplinary proceeding. Id. Further,
13 disbarment proceedings are not criminal proceedings, and relaxed
14 rules of evidence apply. Florida Bar v. Vannier, 498 So. 2d 896, 898
15 (Fla. 1986) (finding that "in bar discipline cases, hearsay is
16 admissible and there is no right to confront witnesses face to face.
17 The referee is not barred by technical rules of evidence."); Matter
18 of Calvo, 88 F.3d 962, 967 (11th Cir. 1996) (citing Vannier, 498 So.2d
19 at 898).

20 Although Rochet was not able to cross-examine witnesses during
21 the evidentiary hearing stage, he was given the opportunity to submit
22 objections to counter the evidence introduced at the hearings.

Misc. No. 03-016 & Civ. No. 96-2443 (JAF)

-19-

1 Docket Document No. 21 (granting Mr. Rochet the opportunity to file
2 any informative motions to clarify any perceived ambiguities).
3 Rochet took advantage of this opportunity, and filed objections to
4 the testimony of one witness. Magistrate Judge Delgado-Colón
5 considered Rochet's objections prior to filing the report and
6 recommendation. Docket Document No. 23. Rochet also alleges that
7 false testimony was introduced at the hearings, but by his own
8 admission, he objected to the alleged false testimony during the
9 evidentiary hearing, and Magistrate Judge Delgado-Colón considered
10 the testimony in light of Rochet's objection. Docket Document
11 No. 67.

12 Rochet additionally claims that he did not have adequate time
13 to file his objection to the report and recommendation. Docket
14 Document No. 67. In his objection, Rochet states that he was
15 notified of the report on September 27, 2005. Pursuant to Local Rule
16 83.5, Rochet had fifteen days to file an objection to the report.
17 D.P.R. LOCAL R. 83.5(b). This court granted Rochet until October 17,
18 2005, twenty days after being placed on notice of the report, to
19 supplement his objection, originally filed on October 7, 2005.
20 Docket Document Nos. 67, 68. Despite this extension, Rochet failed
21 to submit any additional materials to expand upon his original
22 objection.

Misc. No. 03-016 & Civ. No. 96-2443 (JAF)

-20-

1 Rochet, rather than answering directly to the charges of
2 misconduct clearly elucidated in the Magistrate's report, has instead
3 chosen to file increasingly incomprehensible motions alleging
4 fantastical conspiracies, going so far as to demand the resignation
5 of Magistrate Judge Delgado-Colón. Docket Document Nos. 79, 80.

6 We find that Rochet has been given the opportunity to confront,
7 challenge, and rebut the evidence against him, but has chosen not to
8 do so. We, therefore, find his procedural challenge unpersuasive.

9 **3. Judicial Bias**

10 Rochet has continuously and vehemently protested that Magistrate
11 Judge Delgado-Colón has not acted as an impartial and neutral
12 judicial officer, and her bias has deprived Rochet of his procedural
13 due process rights. Docket Document Nos. 67, 78, 79.

14 According to Rochet, Magistrate Judge Delgado-Colón's bias is
15 clearly evidenced by her "nasty" attitude during the June 29, 2005,
16 evidentiary hearings; her "inquisitorial" tone; her rejection of a
17 request by Rochet to use the restroom during the June/July 2003
18 hearings; her "holding" of Rochet during the July 15, 2003, hearings,
19 which resulted in the attorney nearly missing his flight; and her
20 Orders of April 12 and June 13, 2005.

21 We remind Rochet that judicial decisions adverse to his
22 interests, such as the orders we believe Rochet refers to in his

Misc. No. 03-016 & Civ. No. 96-2443 (JAF)

-21-

1 objection, Docket Document Nos. 36, 48, are not evidence, in and of
2 themselves, of judicial bias. Rochet's subjective impressions of
3 bias or prejudice, no matter how vehemently expressed, find so
4 little, and such weak, objective corroboration in the record, that we
5 will entirely disregard his reckless characterizations of Magistrate
6 Judge Delgado-Colón's actions. In re Córdova-Gonzalez, 996 F.2d
7 1334, 1336 (1st Cir. 1993).

8 We conclude that Rochet's procedural due process rights,
9 comprised of notice and the opportunity to be heard,
10 Córdova-González, 996 F.2d at 1336, have more than adequately been
11 met.

12 **B. Disciplinary Sanctions**

13 The Magistrate Judge's report, based upon multiple evidentiary
14 hearings and in-chambers conferences, lays out in exhaustive detail
15 the specific professional misconduct committed by Rochet during the
16 Río Piedras Explosion litigation. Docket Document No. 63. Under
17 Local Rule 72(d), the court is obligated to make a de-novo
18 determination of any portion of a magistrate judge's findings and
19 recommendations to which specific written objection has been made.
20 D.P.R. LOCAL R. 72(d). The court thereafter may accept, reject or
21 modify, in whole or in part, the findings or recommendations made by
22 the magistrate judge. Id. The court need not normally conduct a new

Misc. No. 03-016 & Civ. No. 96-2443 (JAF)

-22-

1 hearing and may consider the record developed before the magistrate
2 judge, and may make a final determination on the basis of that
3 record. Id. In disciplinary cases, the district court is ultimately
4 responsible for the imposition of sanctions.

5 Although Rochet's objection to the Magistrate Judge's report
6 contains a subheading entitled "Specific Objections," this section is
7 primarily composed of allegations of judicial bias, disposed of
8 above, and an objection to the final disbursement of settlement
9 amounts, rather than specific objections to Magistrate Judge Delgado-
10 Colón's factual findings. Docket Document No. 67. In regards to the
11 findings of professional misconduct, Rochet briefly refers to the
12 fact that the Puerto Rico Supreme Court has dismissed three
13 complaints filed by individuals who had also filed complaints against
14 Rochet in the current federal proceeding, referring to exhibits that
15 do not accompany his filing. Id. Rochet further alleges that
16 another individual testifying at the evidentiary hearings was not
17 actually a former client of his, but rather, a person assuming his
18 client's identity. Id.

19 Given that Rochet has failed to provide additional specific
20 objections to the factual findings, despite being granted additional
21 time to supplement his original motion and having the opportunity to
22 present his case at a disciplinary hearing, and given that we find

Misc. No. 03-016 & Civ. No. 96-2443 (JAF)

-23-

1 Magistrate Delgado-Colón's factual findings to be based on clear and
2 convincing evidence in the record, we accept and adopt the report and
3 recommendation in total. Even if we were to reject those sections of
4 the report touched by Rochet's specific objections, there remains
5 ample evidence of professional misconduct deserving of severe
6 disciplinary sanctions.

7 "Where, as here, a magistrate judge astutely takes the measure
8 of a case and hands down a convincing, well-reasoned decision, the
9 Court should refrain from writing at length to no other end than to
10 hear its own words resonate." Nogueras Cartagena v. United States,
11 172 F. Supp. 2d 296, 305 (D.P.R. 2001) (citing Corrada Betances v.
12 Sea Land Services, Inc., 248 F.3d 40 (1st Cir. 2001) (internal
13 citations omitted)). As such, we decline to repeat the factual
14 findings regarding the extensive violations to the Model Rules
15 verbatim, but instead, highlight the salient portions for the
16 purposes of discussing the disciplinary sanctions to be imposed
17 against Rochet.

18 In determining what sanctions Rochet should face for his
19 egregious professional misconduct, this court will use the American
20 Bar Association's Standards for Imposing Lawyer Sanctions (1986) ("ABA
21 Standards") as a basic, but not conclusive, guide. Matter of Brady,
22 923 P.2d 836, 839 (Ariz. 1996) ("[a]lthough not mandatory, the ABA

Misc. No. 03-016 & Civ. No. 96-2443 (JAF)

-24-

1 Standards are persuasive as to appropriate sanctions and provide a
2 'useful tool' in deciding the sanction to be applied."). The
3 standards make distinctions upon the level of conduct required for
4 particular ethical violations. Id. The standards are adaptable,
5 recognizing that "sanctions imposed must reflect the circumstances of
6 each individual lawyer, and therefore provide for consideration of
7 aggravating and mitigating circumstances in each case." Id. at § 1.3.

8 Applying the ABA Standards to Rochet's conduct as found in the
9 report and recommendation, it is clear that disbarment is required.
10 The ABA Standards provide for disbarment when a lawyer "with the
11 intent to benefit the lawyer or another, knowingly reveals
12 information relating to representation of a client not otherwise
13 lawfully permitted to be disclosed, and this disclosure causes injury
14 or potential injury to a client." Id. § 4.21. Disbarment is also
15 appropriate in cases where, *inter alia*, a lawyer: (1) engages in a
16 pattern of neglect with respect to client matters and causes serious
17 or potentially serious injury to a client, Id. § 4.41(c); (2) engages
18 in intentional conduct involving dishonesty, fraud, deceit, or
19 misrepresentation that seriously adversely reflects on the lawyer's
20 fitness to practice, Id. § 5.11(b); or (3) knowingly engages in
21 conduct that is a violation of a duty owed as a professional with the
22 intent to obtain a benefit for the lawyer or another, and causes

Misc. No. 03-016 & Civ. No. 96-2443 (JAF)

-25-

1 serious or potentially serious injury to a client, the public, or the
2 legal system. Id. § 7.1. Aggravating factors that may justify an
3 increase in the degree of discipline to be imposed include dishonest
4 or selfish motives, a pattern of misconduct, multiple offenses, and
5 the refusal to acknowledge the wrongful nature of conduct. Id.
6 § 9.2.

7 It is undisputed that Rochet entered into a contract with
8 Certified Public Accountant Enrique Cardona, wherein the latter, in
9 exchange for half of the attorney's fees to which Rochet became
10 entitled, agreed to finance the litigation. Rochet also allowed the
11 accountant to participate in representation decisions while he
12 financed the litigation. Docket Document No. 63. This agreement is
13 in clear violation of Model Rules 1.6,² 1.8(f),³ and 5.4.⁴ Rochet has

²Rule 1.6 states, in pertinent part:

(a) A lawyer shall not reveal information relating to the representation of a client unless the client gives informed consent, the disclosure is impliedly authorized in order to carry out the representation or the disclosure is permitted by paragraph (b).

³Rule 1.8(f) stipulates that:

A lawyer shall not accept compensation for representing a client from one other than the client unless:

(1) the client gives informed consent;
(2) there is no interference with the lawyer's independence of professional judgment or with the client-lawyer relationship; and
(3) information relating to representation of a client is

Misc. No. 03-016 & Civ. No. 96-2443 (JAF)

-26-

1 provided no evidence that his clients were ever informed of the

protected as required by Rule 1.6.

⁴The relevant portions of Rule 5.4 stipulate that:

(a) A lawyer or law firm shall not share legal fees with a nonlawyer, except that:

(1) an agreement by a lawyer with the lawyer's firm, partner, or associate may provide for the payment of money, over a reasonable period of time after the lawyer's death, to the lawyer's estate or to one or more specified persons;

(2) a lawyer who purchases the practice of a deceased, disabled, or disappeared lawyer may, pursuant to the provisions of Rule 1.17, pay to the estate or other representative of that lawyer the agreed-upon purchase price;

(3) a lawyer or law firm may include nonlawyer employees in a compensation or retirement plan, even though the plan is based in whole or in part on a profit-sharing arrangement; and

(4) a lawyer may share court-awarded legal fees with a nonprofit organization that employed, retained or recommended employment of the lawyer in the matter.

(b) A lawyer shall not form a partnership with a nonlawyer if any of the activities of the partnership consist of the practice of law.

(c) A lawyer shall not permit a person who recommends, employs, or pays the lawyer to render legal services for another to direct or regulate the lawyer's professional judgment in rendering such legal services.

(d) A lawyer shall not practice with or in the form of a professional corporation or association authorized to practice law for a profit, if:

(1) a nonlawyer owns any interest therein, except that a fiduciary representative of the estate of a lawyer may hold the stock or interest of the lawyer for a reasonable time during administration;

Misc. No. 03-016 & Civ. No. 96-2443 (JAF)

-27-

1 contract between him and CPA Cardona, or aware of its scope.
2 Magistrate Judge Delgado-Colón concluded that it appears that CPA
3 Cardona was privy to all information pertaining to the claims of
4 Rochet's clients, participated at joint meetings between Rochet and
5 plaintiffs, kept most of the case-related records, and discussed the
6 case with and participated at meetings between Rochet's clients.
7 Docket Document No. 63. It is also clear that Rochet failed to
8 represent his clients with the level of competence and diligence
9 required by Model Rules 1.1,⁵ 1.3,⁶ 1.4,⁷ and 3.2.⁸

⁵ Rule 1.1 reads as follows:

A lawyer shall provide competent representation to a client. Competent representation requires the legal knowledge, skill, thoroughness and preparation reasonably necessary for the representation.

⁶ Rule 1.3 states:

A lawyer shall act with reasonable diligence and promptness in representing a client.

⁷ Rule 1.4 states, in pertinent part:

(a) A lawyer shall:

- (1) promptly inform the client of any decision or circumstance with respect to which the client's informed consent, as defined in Rule 1.0(e), is required by these Rules;
- (2) reasonably consult with the clients about the means by which the client's objectives are to be accomplished;
- (3) keep the client reasonably informed about the status of the matter;
- (4) promptly comply with reasonable requests for information;

Misc. No. 03-016 & Civ. No. 96-2443 (JAF)

-28-

1 Although Rochet has claimed that the testimony of four witnesses
2 was motivated by bad faith, Docket Document No. 67, he does not
3 address the fact that additional clients have also filed complaints
4 alleging that Rochet never responded to their inquiries, they felt as
5 if their cases were abandoned, they were not assisted in prosecuting
6 their cases, in preparing for depositions, or in securing the expert
7 reports necessary to support their claims. Docket Document No. 63.
8 Rochet has additionally violated Model Rule 1.5,⁸ by attempting to

⁸ Rule 3.2 states:

A lawyer shall make reasonable efforts to expedite litigation consistent with the interests of the client.

⁹ Rule 1.5 reads, in pertinent part:

(b) The scope of the representation and the basis or rate of the fee and expenses for which the client will be responsible shall be communicated to the client, preferably in writing, before or within a reasonable time after commencing the representation, except when the lawyer will charge a regularly represented client on the same basis or rate. Any changes in the basis or rate of the fee or expenses shall also be communicated to the client.

(c) A fee may be contingent on the outcome of the matter for which the service is rendered, except in a matter in which a contingent fee is prohibited by paragraph (d) or other law. A contingent fee agreement shall be in a writing signed by the client and shall state the method by which the fee is to be determined, including the percentage or percentages that shall accrue to the lawyer in the event of settlement, trial or appeal; litigation and other expenses to be deducted from the recovery; and whether such expenses are to be deducted before or after the contingent fee is calculated. The agreement must clearly notify the client of any expenses for which the client will be liable whether or not the client is the prevailing party. Upon conclusion of a contingent fee matter, the lawyer

Misc. No. 03-016 & Civ. No. 96-2443 (JAF)

-29-

1 include administrative expenses as part of the contingent fee
 2 agreement, despite no prior notice or agreement with each client. As
 3 stated in the report and recommendation, "[i]n the absence of an
 4 agreement to the contrary, it is impermissible for a lawyer to create
 5 an additional source of profit for the law firm beyond that which is
 6 contained in the provision of professional services." Docket Document
 7 No. 63.

8 Magistrate Judge Delgado-Colón has also found evidence that
 9 Rochet informed clients that Judge Ward was a "racist, sent to the
 10 Federal Court to cut the heads off Hispanics, that disliked Hispanics
 11 and was to [sic] dismiss the complaint," in order to induce his
 12 clients to endorse the settlement agreement and sign the Attorney Fee
 13 Contract. Docket Document No. 63. This conduct is in clear
 14 violation of Model Rules 8.2(a),¹⁰ and 8.4(d).¹¹ The Magistrate Judge

shall provide the client with a written statement stating the outcome of the matter and, if there is a recovery, showing the remittance to the client and the method of its determination.

¹⁰ Rule 8.2(a) states:

A lawyer shall not make a statement that the lawyer knows to be false or with reckless disregard as to its truth or falsity concerning the qualifications or integrity of a judge, adjudicatory officer or public legal officer, or of a candidate for election or appointment to judicial or legal office.

¹¹ Rule 8.4, in pertinent part, reads:

It is professional misconduct for a lawyer to:

Misc. No. 03-016 & Civ. No. 96-2443 (JAF)

-30-

1 additionally found evidence that Rochet violated Model Rule 8.4 by
2 threatening clients in order to obtain endorsement of belatedly-
3 submitted attorney's fees contracts, assuring a case outcome,
4 charging for expenses not incurred, and pre-dating or altering
5 documents.

6 Through his contract with CPA Cardona, Rochet revealed
7 confidences to non-privileged parties for his own personal gain.
8 Rochet's conduct additionally evidenced a pattern both of neglect and
9 intentional dishonesty adversely affecting his clients' interests.
10 In total, the professional misconduct committed by Rochet during his
11 representation of the Río Piedras plaintiffs is astonishing and
12 utterly unacceptable. Due to the serious and egregious nature of the
13 misconduct involved, we have no choice but to order that Rochet-
14 Santoro be disbarred from practice in the District Court for the
15 District of Puerto Rico.

16

(a) violate or attempt to violate the Rules of Professional Conduct, knowingly assist or induce another to do so, or do so through the acts of another;

 . . .

(c) engage in conduct involving dishonesty, fraud, deceit or misrepresentation;

(d) engage in conduct that is prejudicial to the administration of justice;

Misc. No. 03-016 & Civ. No. 96-2443 (JAF)

- 31 -

III.

Conclusion

"The power of a court to impose appropriate and reasonable sanctions upon those admitted to its bar is a familiar phenomenon and lies within the inherent power of any court of record.'" Flaksa v. Little River Marine Constr. Co., 389 F.2d 885, 889 n.10 (5th Cir. 1968) (quoting Gamble v. Pope & Talbert, Inc., 307 F.2d 729, 735 (3d Cir. 1962) (Biggs, CJ., dissenting)); see also Mandanici, 152 F.3d at 751 ("every court has inherent authority to disbar or discipline attorneys for unprofessional conduct") (Beam, J. concurring in part). "Disciplinary procedures are viewed as a function of maintaining the integrity of the bar and avoiding the appearance of impropriety Thus, discipline of . . . attorneys is seen as both 'a catharsis for the profession and a prophylactic for the public.'" In re Stoner, 507 F.Supp. 490, 492 (N.D. Ga. 1981) (citations omitted).

We have clear and convincing evidence that Attorney Nelson Rochet-Santoro's conduct has violated Model Rules of Professional Conduct 1.1, 1.3, 1.4, 1.5, 1.6, 1.8(f); 3.2; 5.4(a), (b), (c), and (d) (1); 8.2(a) and 8.4(a), (c), and (d). We, therefore, order Rochet's disbarment.

IT IS SO ORDERED.

Misc. No. 03-016 & Civ. No. 96-2443 (JAF)

-32-

1 San Juan, Puerto Rico, this 2nd day of March, 2006.

2 **BY ORDER OF THE COURT:**

3 S/José Antonio Fusté
4 JOSE ANTONIO FUSTE
5 Chief U.S. District Judge